

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Cisco WebEx LLC Request for)	WC Docket No. 06-122
Review of a Decision of the)	
Universal Service Administrator)	

COMMENTS OF TECHNET

The Technology Network (“TechNet”), which represents America's leading technology companies, submits these comments in support of the Request for Review filed by Cisco Webex (“WebEx”).¹ The Universal Service Administrative Company (“USAC”) decision on review (the “Decision”)² would, if left standing, threaten the vibrant innovation that has characterized the Internet ecosystem for nearly twenty years. That Decision is also flatly inconsistent with the Communications Act of 1934, as amended (the “Act”)³ and governing Federal Communications Commission (“Commission”) precedent. The Wireline Competition Bureau should therefore reject USAC’s decision and conclude that the WebEx revenues at issue were properly classified as unassessable “information service” revenues.

¹ See Cisco WebEx, LLC, Request For Review of a Decision of the Universal Service Administrator (filed Apr. 8, 2013) (“Petition”); Public Notice, *Wireline Competition Bureau Seeks Comment on Cisco WebEx LLC Request for Review of a Decision by the Universal Service Administrative Company*, WC Docket No. 06-122, DA 13-717 (rel. Apr. 15, 2013) (“Notice”).

² Letter from Dennis Fischer, Senior Internal Auditor, USAC, to Bill Hodowski, Cisco WebEx LLC (Feb 7, 2013), attached to Petition.

³ 47 U.S.C. § 151 *et seq.*

BACKGROUND

As the Petition explains (and as the User Guide attached to it⁴ elaborates in great detail), WebEx is an online collaboration tool that permits users to upload, share, and jointly edit work product. WebEx combines videoconferencing capabilities, instant messaging, and one-to-one or one-to-many text “chat” functions into a single, fully integrated offering, which users can access through a telephone, computer, smartphone, tablet, or other device.⁵ Although WebEx customers *can* use the service to facilitate ordinary conference calls, it would be foolish for them to do so, given that WebEx costs nearly twice as much as a pure teleconferencing service on a per-minute basis.⁶

Nevertheless, in its February 7, 2013 Decision, USAC concluded that WebEx was not an integrated information service under the Act and Commission precedent, but rather two separable services: (1) an “information service” providing users with videoconferencing, document sharing, and the host of advanced collaborative functionalities described in the Petition and (2) a distinct and severable transmission offering. USAC’s decision was based on its conclusion that certain audio components *could* be used on their own, without simultaneous reliance on the service’s more advanced functionalities. As described more fully below, this conclusion could have grave consequences for innovation in the Internet ecosystem, and is based on a misreading of the governing statute and the relevant precedent.

⁴ See Petition at Exhibit C.

⁵ See Petition at 1-6.

⁶ See *id.* at 6.

DISCUSSION

I. USAC’S CONCLUSION THREATENS INNOVATION IN THE INTERNET ECOSYSTEM.

If left standing, USAC’s decision here would stifle innovation in the Internet ecosystem, harming the economy and undercutting the competitiveness of American information technology and communications providers.

Nearly 20 years ago, Congress recognized that services combining transmission with “a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information”⁷ were not properly subjected to regulations designed for monopoly-era telephone systems. It therefore designated these offerings “information services,”⁸ and exempted such services from virtually all of the mandates found in Title II of the Act. Title II’s provisions are crafted to apply to “carriers” and “telecommunications carriers” – entities that provide telecommunications services, not information services⁹ – and specifically provide that even an entity providing a common-carriage “telecommunications service” may “be treated as a common carrier ... only to the extent that it is engaged in providing telecommunications services...”¹⁰ Likewise, while Section 254’s so-called “permissive authority” allows the Commission to assess information-service revenues for Universal Service purposes, it demands that the Commission first determine that “the public interest so requires” – a decision that the

⁷ 47 U.S.C. § 153(24).

⁸ *Id.*

⁹ See *Federal-State Joint Board on Universal Service*, 13 FCC Rcd 11501, 11507 ¶ 13 (1998) (“*Report to Congress*”).

¹⁰ 47 U.S.C. § 153(51)

Commission has not made here, and that USAC is powerless to make on its own.¹¹ In short, as the Supreme Court has explained, “[t]he [Communications] Act regulates telecommunications carriers, but not information-service providers, as common carriers.”¹²

Congress’s decision to free information services from virtually all Title II regulation has unleashed a wave of innovation among TechNet’s member companies and throughout the economy. This innovation has transformed not only the information and communications technology sector, but all spheres of American life. Last year, the Commission cited estimates that wireline companies have invested approximately \$41 billion a year between 1996 and 2010 to expand their broadband networks, while mobile providers have spent billions of their own on such build-out.¹³ Increased access to the Internet has transformed the U.S. economy. Between 2004 and 2009, the Internet was directly responsible for 15 percent of U.S. GDP growth, and the explosion of Internet applications and capabilities generated annual consumer surpluses of \$64 billion.¹⁴ Software and services account for a substantial portion of America’s Internet economy – 26%, as opposed to 13% in the United Kingdom, 15% in Germany and Japan, and just 5% in

¹¹ *Id.* § 254(d).

¹² *NCTA v. Brand X Internet Services*, 545 U.S. 967, 975 (2005).

¹³ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Eighth Broadband Progress Report, 27 FCC Rcd 10342, 10401-02 ¶ 136 (2012).

¹⁴ McKinsey Global Institute, *Internet matters; The Net’s sweeping impact on growth, jobs, and prosperity*, at 16, 23 (May 2011), http://www.mckinsey.com/~media/McKinsey/dotcom/Insights%20and%20pubs/MGI/Research/Technology%20and%20Innovation/Internet%20matters%20-%20Nets%20sweeping%20impact/MGI_internet_matters_full_report.ashx.

Canada.¹⁵ This unique U.S. Internet economy captures more than 30 percent of global Internet revenues and more than 40 percent of net income.¹⁶ The explosion of innovation also has led to significant job creation. The Internet ecosystem accounts for 5.1 million American jobs, and contributed about \$530 billion to U.S. GDP in 2011.¹⁷ The mobile app industry – which did not exist only six years ago – now is responsible for roughly 466,000 U.S. jobs.¹⁸

This innovation and growth – not confined (as elsewhere) to the hardware and/or telecommunications subsectors, but extending to software and services as well – is due in no small part to the decisions made by Congress and the Commission to free information services from the regulation applied to telephony. Software and service developers have been able to innovate and develop offerings designed to meet the needs of consumers rather than focusing on one-size-fits-all regulatory mandates, and to sell services at prices approximating costs rather than subject to universal service charges equaling 10, 15, or 20 percent of end-user revenues.

USAC's Decision, however, threatens to eviscerate this innovative environment and the benefits it has generated. TechNet's members fear that if WebEx can be disaggregated and viewed as separate "telecommunications" and "information service" offerings, then other advanced offerings could easily be subjected to the same fate. By definition, all information services are provided "via telecommunications." Moreover, it appears likely that most advanced offerings combining communications and processing *could* (like WebEx) be configured and used

¹⁵ *Id.* at 51.

¹⁶ *Id.* at 4.

¹⁷ IAB, Economic Value of the Advertising-Supported Internet Ecosystem, 1, 81 (Sept. 2012), http://progressivepolicy.org/wp-content/uploads/2012/07/07.2012-Mandel_Carew_Investment-Heroes_Whos-Betting-on-Americas-Future.pdf.

¹⁸ TechNet, *Where the Jobs Are: The App Economy*, at 1 (Feb. 7, 2012), <http://www.technet.org/wp-content/uploads/2012/02/TechNet-App-Economy-Jobs-Study.pdf>.

in a manner that only (or primarily) invokes their transmission capabilities. Thus, the Decision’s logic – under which the ability to use transmission apart from processing, however unlikely or illogical such use might be – could well be understood to embrace a wide swathe of information services. Indeed, in some cases, the services at issue might be offered at standardized rates and terms, potentially subjecting the underlying services to the full panoply of Title II regulation.

In short, then, the Decision threatens to undermine innovation – and, in particular, to dissuade providers from developing new tools that combine voice, video, and data services. The Bureau should promote such innovation by invalidating USAC’s Decision and making clear that WebEx and similarly advanced offerings are integrated information services.

II. USAC’S CONCLUSION IS INCONSISTENT WITH COMMISSION PRECEDENT.

USAC’s decision also violates the Commission’s long-standing precedent regarding the dividing line between “telecommunications” offerings and “information services.” With exceptions not relevant here, the Act defines “information service” to mean “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications...”¹⁹ WebEx is exactly such a service – i.e, it relies on telecommunications, but only to facilitate the generation, acquisition, storage, transformation, processing, retrieval, utilization, and making available of information. Moreover, even if a user were to use the service’s telecommunications capabilities without invoking its other features, WebEx would still be an integrated service that “offer[s] ... a *capability for*” use of those advanced features.²⁰ As WebEx explains, the Commission has

¹⁹ 47 U.S.C. § 153(24).

²⁰ *Id.*

hewed to this view for at least 15 years.²¹ Thus, for example, the Commission has classified broadband Internet access services as integrated information services based on the availability of “E-mail, newsgroups, the ability for the user to create a web page that is accessible by other Internet users, and the DNS,” but has made clear that this classification applies “regardless of whether subscribers use all of the functions provided as part of the service....”²²

USAC attempts to evade this precedent by focusing on the fact that users *can* use transmission without utilizing WebEx’s other functionalities, but its analysis fails. What matters under the statute, as discussed above, is the service’s *ability* to provide storage, processing, and the like, not whether an individual customer chooses to use those features. In any case, WebEx’s transmission capabilities can only be used by a customer who has purchased access to the service’s advanced functionalities, belying any claim that those functions are not integrated with the related telecommunications. Indeed, as discussed above, a customer who uses WebEx purely for bridging will pay nearly twice as much as he or she would pay using a service designed for bridging, rendering widespread use of the service for that purpose extremely unlikely (and certainly irrational).

USAC’s reliance on the Commission’s calling-card precedent fails. In 2006, the Commission found that calls placed using pre-paid cards were telecommunications services,

²¹ See Petition at 9-10 (quoting *Report to Congress*, 13 FCC Rcd at 11529 ¶ 56 (offering is integrated information service if telecommunications is “an inseparable part” of the package)).

²² *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, 17 FCC Rcd 4798, 4823 ¶ 39 (2002). See also *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853, 14911 ¶ 105 (2005) (citing fact that customers “receive and pay for a single, functionally integrated service, not two distinct services”); *Appropriate Regulatory Treatment for Broadband Access to the Internet over Wireless Networks*, 22 FCC Rcd 5901, 5912 ¶ 30 (2007) (transmission component not distinct when it is “not being offered as a stand-alone offering of transmission for a fee directly to the public”).

even if the caller was presented with a menu of options upon dialing the calling-card platform.²³ The Commission found there that the other offerings – some of which were information services – were not integrated with the underlying calling capabilities, because “the use of the telecommunications transmission capability is completely independent of the various other capabilities that the card makes available.”²⁴ This analysis is inapposite with respect to WebEx, which only offers telecommunications as part and parcel of a single collaboration tool. Whereas the information-service add-ons were offered alongside the calling card services (in an apparent attempt to evade regulation with respect to the calling-card offerings themselves), they did not alter the cards’ core capability – the ability to place a phone call. In contrast, WebEx’s information-processing capabilities are central to the integrated offering, which bears little resemblance to basic transmission.

The *InterCall* precedent on which USAC relies is likewise inapt. The service involved in *InterCall* was (in the Commission’s words) designed “simply to facilitate the routing of ordinary telephone calls.”²⁵ Thus, “[f]rom the perspective of the user, InterCall’s service essentially [was] an ordinary telephone call (although it may involve three or more participants).”²⁶ As discussed, WebEx provides a service vastly different from an “ordinary telephone call[.]” InterCall’s service used additional functionalities to serve its core “audio bridging” functionalities – its features enabled users to plan, manage, and record telephone calls – whereas WebEx uses audio

²³ *Regulation of Prepaid Calling Card Services*, 21 FCC Rcd 7290 (2006).

²⁴ *Id.* at 7296 ¶ 15 (2006).

²⁵ *Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, 23 FCC Rcd 10731, 10735 ¶ 11 (2008).

²⁶ Brief for Respondents Federal Communications Commission and United States of America, *The Conference Group, LLC v. FCC*, D.C. Cir. No. 12-1124 at 22 (filed Dec. 7, 2012).

to advance the processing, storage, retrieval, and sharing of information – i.e., to provide a fully integrated multimedia collaboration tool relying on voice, video, and data services to facilitate information sharing among users relying on a host of platforms and technologies. *InterCall* thus has no bearing here.

III. CONCLUSION

For the reasons described above, the Bureau should invalidate the USAC Decision. Reversal of the Decision will promote further innovation and investment in the Internet ecosystem and will ensure that the treatment of information services proceeds in the manner prescribed by Congress and Commission precedent.

Respectfully submitted,



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